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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/845,941	04/30/2001	Michael G. Hayek	IAM 0618 PA	3312

27752 7590 06/16/2004

THE PROCTER & GAMBLE COMPANY
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CINCINNATI, OH 45224

EXAMINER

KIM, JENNIFER M

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/845,941

Applicant(s)

HAYEK ET AL.

Examiner

Jennifer Kim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 10 and 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 10, 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

The amendment filed January 13, 2004 have been received and entered into the application.

Action Summary

Claims 1-4 of record rejected under 35 U.S.C. 103 (a) over Reinhart (EP 0678247) is maintained for the reasons stated in the previous office action.

Claims 10 and 11 of record rejected under 35 U.S.C. 103 (a) over Reinhart (EP 0678247) and further in view of Brown et al. (U. S. Patent No. 4,229,485) is maintained for the reasons stated in the previous office action.

Response to Arguments

Applicants arguments filed on January 13, 2004 have been fully considered but they are not persuasive. Applicants argue that Reinhart fails to teach or suggest any difference among sunflower, fish or flaxseed oil and fails to teach or suggest the use of flaxseed oil specifically, to provide highly concentrated levels of omega-3 and omega-6 fatty acids and the claims now recite omega-6 fatty acids, the majority of which are derived from flaxseed oil and omega-3 fatty acids, in which at least 80% is linoleic acid derived from flaxseed oil. This is not persuasive because Reinhart teaches that omega-3 fatty acids are one or more compounds selected from the group consisting of

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eicosapentaenic acid and docosahexaenic acid and alpha-linolenic acid, and omega-6 fatty acids are one or more compounds selected from the group consisting of fish oil and flax. (see claims 5 and 6 particular). Reinhart also teach that preferred ratio of the pet food product having ratio of omega-6 fatty acids to omega-3 fatty acids, preferably, 5:1. Therefore it would have been obvious to one of ordinary skill in the art to formulate pet food composition comprising omega-6 fatty acids and omega-3 fatty acids with preferred ratio of 5:1 respectively with the fat sources for omega-3 fatty acids as being either one of fish oil or flax as taught by Reinhart. Applicants argue that it is stated in the specification that flaxseed oil offers a better alternative in a lower lipid (14%) diet because flaxseed oil shows minimal immunosuppressive activity compared to fish oil. This is not persuasive because there is no showing to this alleged effect in the specification. In this case, no data is available for the evaluation of the unexpected result and that flaxseed oil is taught as one of the preferred embodiments of Reinhart as cited in claim 5. Thus, the claims fail to patentably distinguish over the state of the art as represented by the cited references.

In view of the above Office Action of January 13, 2004 is deemed proper and asserted with full force and repeated herein to obviate applicants' claims.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer Kim whose telephone number is 571-272-0628. The examiner can normally be reached on Monday through Friday 6:30 am to 3 pm.

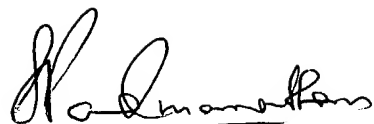
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read 'S. Padmanabhan', with a horizontal line underneath the name.

Sreenivasan Padmanabhan
Supervisory Examiner
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Jmk

June 11, 2004